IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1467 OF 2004

Mr.Dilip Fulchand Punamiya ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

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Mrs.S.R.Kumbhat with Mr.A.K.Saxena for Petitioner.

Mr.S.R.Shinde, A.P.P. for Respondent No.1.

Mr.Shirish Gupte, Sr.Counsel with Mr.Prakash Naik and Ms.Sharmila Kaushik for Respondents 2, 5, 6, 7, 8 and 9.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 1, 2004.

P.C.

1. Heard Counsel for the parties. I see no reason to entertain this Petition. Learned Counsel for the Petitioner has placed emphasis on the averments made in Paragraphs 4 and 8 of the Petition to contend that the Petitioner has reasonable apprehension that free and fair trial will not be possible in the Court at Alibag,

District Raigad. Even on fair reading of the said paragraphs 4 and 8, which are pressed into service, to my mind, the allegations are too general and cannot be the basis to hold that the apprehension of the Petitioner is reasonable.

2. Learned Counsel placed reliance on the exposition of the Apex Court in recent decision in the case of **Zahira Habibulla H. Sheikh & Anr. vs. State of Gujarat & Ors. reported in (2004) 4 SCC 158**, in particular **head-notes C amd D.** To my mind, however, this decision is of no avail to the Petitioner before this Court. Even in this decision, the Apex Court has re-iterated the settled position that mere allegation that there is apprehension that justice will not be done in a given case or that there are general allegations of surcharged atmosphere, alone does not suffice. Whereas, the Court has to see whether the apprehension is reasonable or not. It is further observed that the Court must be fully satisfied about the existence of such conditions which would render inevitably impossible the holding of a fair and impartial trial, uninfluenced by extraneous

considerations that may ultimately undermine the confidence of a reasonable and right-thinking citizen, in the justice delivery system. The allegation in Paragraph 4, much less, Paragraph 8, in no way, suggest that the Court which has conducted the trial will be biased or there will be no free and fair trial. On the other hand, the grievance seems to be more in the nature of faulty investigation, however, the process of investigation has concluded long back and charge-sheet is also filed. That process has not been questioned at the appropriate time. On the other hand, after filing of the charge-sheet, the Trial Court has taken cognizance and has proceeded with the trial. I am told that about eight prosecution witnesses have already been examined. There is nothing on record to even remotely suggest that the trial which has progressed so far, is in inappropriate manner. General apprehension is expressed that the witnesses will not come forward to give evidence. However, as mentioned earlier, already eight prosecution witnesses have been examined and there is nothing on record that prosecution witnesses are not willing to come

forward to give evidence.

3. Serious grievance was made about the fact that the Petitioner wanted some more accused to be named in the commission of the alleged offence which application was preferred, and was opposed even by the Public Prosecutor before the Trial Court. The fact remains that the Trial Court has considered the rival submissions and has disposed of the Application by a reasoned decision, as back as on June 10, 2004. That order has not been questioned so far. In other words, the said order which has gone against the Petitioner has been accepted by him. If it is so, there is no basis to entertain the abovesaid grievance before this Court justifying transfer of the case to some other Court. Merely because the persons involved in the offence are placed at high positions in life, that does not mean that there will be no free and fair trial. To my mind, the apprehension expressed by the Petitioner is not reasonable.

4. My attention has been rightly invited by

Mr.Gupte to the insinuations contained in Para 9 of the Petition that the Petitioner apprehends that the fair and impartial enquiry or trial cannot be held before the 2nd ad-hoc Additional Sessions Judge at Alibag, Raigad, because of the political pressure from several parties. Counsel for the Petitioner made an attempt to explain that it is not an insinuation against the Judge concerned, but a general apprehension about the progress of the trial before that Court. Be that as it may, I see no merits in this Petition. The same is dismissed.

A.M.KHANWILKAR, J.